

**Letter of Findings: 01-20170233
Individual Income Tax
For Tax Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Married couple established that, for 2013, they were not domiciled in Indiana. However, because Wife earned wages in Indiana, they must file a form IT-40RNR for tax year 2013.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-4-1; IC § 6-3-5-1; IC § 6-3-1-12; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2011); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayers protest the imposition of Indiana individual income tax for the 2013 tax year.

STATEMENT OF FACTS

Husband and Wife ("Taxpayers") filed a 2013 Reciprocal Nonresident Indiana Individual Income Tax Return ("IT-40RNR"). The Indiana Department of Revenue ("Department") did not accept Taxpayer's IT-40RNR as, based on the best information available to it, the Department determined that, for tax year 2013, Taxpayers had Indiana income. As such, the Department concluded that Taxpayers were Indiana residents who should have filed a 2013 Indiana Full-Year Resident Individual Income Tax Return ("IT-40") and pay any tax due. The Department thus issued a tax assessment for Taxpayers for 2013.

Taxpayers timely protested the assessment and an administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Residency.

DISCUSSION

The Department determined that Taxpayers were Indiana residents during tax year 2013 because Taxpayers appeared to have taken the homestead deduction in Indiana and also earned income in Indiana. The Department therefore concluded that Taxpayers were domiciled in Indiana in 2013 and their income was subject to Indiana income tax.

Taxpayers contend that they owned property in Indiana in 2013, however, they did not claim the homestead deduction on any of that property until tax year 2014. Further, Taxpayers argue that while Wife worked in Indiana, Taxpayers lived in Kentucky in 2013, thus Taxpayers do not believe that they owe Indiana individual income tax for tax year 2013.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2011); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required

to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Therefore, the first determination in this instance is whether or not Taxpayers were residents of Indiana in 2013. Pursuant to IC § 6-3-1-12, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." In other words, a resident includes individuals who are domiciled in Indiana or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana during the taxable year. In this case, Taxpayers owned a rental property in Indiana in 2013 and purchased a home in Indiana in 2013. Taxpayers continued to live in their Kentucky home until 2014 and visited their rental property "an average of [two] times a month." Therefore, Taxpayers were able to establish that they did not spend more than 183 days in Indiana during 2013. Thus, in order to be considered residents of Indiana during 2013, Taxpayers must have been domiciled in Indiana for the tax year.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. **The determination must be made on the facts present in each individual case.** Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. at 277. (Internal citations omitted) (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.**

Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988) the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.** *Id.* at 1317 - 18.

(**Emphasis added**).

Taxpayers lived in Kentucky from approximately 1999 until 2014. During this time, Wife worked in Indiana while Husband worked in Kentucky. On or around 2008 or 2009, Taxpayers acquired a rental property in Indiana, but did not take the homestead on that property. For the tax year at issue, Taxpayers' drivers licenses were issued in Kentucky and their vehicles were registered in Kentucky. Taxpayers owned a home in Kentucky and filed a Kentucky income tax return. Husband's 2013 W2 lists Taxpayers' Kentucky address while Wife's 2013 W2 lists the address of the Indiana home Taxpayers purchased in 2013. Taxpayers owned a boat which was licensed in Indiana because they kept the boat at their Indiana rental property, but the license listed Taxpayers' Kentucky address. Finally, Taxpayers purchased their Indiana home in late June of 2013, but did not move to Indiana due to the extensive repairs the Indiana home required. Taxpayer sold their Kentucky home in 2014 and provided proof that they did not take the homestead credit on their new Indiana home until 2014.

Given the totality of the circumstances, the Department agrees that Taxpayers were not domiciled in Indiana in 2013. While Taxpayers had contact with Indiana, this contact was not enough to establish an Indiana domicile. However, as mentioned above, Indiana imposes a tax "upon the adjusted gross income of every resident person, **and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.**" IC § 6-3-2-1(a) (**Emphasis added**). Taxpayers have established that they were not Indiana residents in

2013. However, because Wife worked in Indiana, it is appropriate to determine whether Taxpayers are liable for Indiana income tax on her wages.

IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point. IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax as follows:

- (1) Income from real or tangible personal property located in this state;
- (2) Income from doing business in this state;
- (3) Income from a trade or profession conducted in this state;
- (4) Compensation for labor or services rendered within this state; and
- (5) Income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible person property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

IC § 6-3-4-1 dictates who must file an income tax return in Indiana. According to the statute, any nonresident individual who has gross income from sources within Indiana in a given taxable year must file a return in Indiana for that year. IC § 6-3-4-1(2). The Indiana code provides an exception to this rule. Under IC § 6-3-5-1:

The tax imposed by [IC 6-3-2](#) on the adjusted gross income derived from sources within the state of Indiana by persons who are nonresidents of this state, shall not be payable if the laws of the state or territory of residence of such persons, at the time such adjusted gross income was earned in this state, contained a reciprocal provision by which residents of this state were exempted from taxes imposed by such state on income earned in such state.

Per the IT-40PNR 2013 Instruction Booklet, Kentucky was a reciprocal state with Indiana, thus, individuals who were full-year residents of Kentucky and whose only type of Indiana income was from wages, tips, or salary, were required to file an IT-40RNR. The IT-40RNR calculates Indiana county tax due based on the Indiana county of employment and then allows a credit for any Indiana state and/or county taxes withheld on an individual's W2.

Taxpayers filed a 2013 IT-40RNR, however, the 2013 IT-40RNR filed by the Taxpayers was blank. The Department agrees that Taxpayers are not domiciled in Indiana, and Taxpayers are sustained on that issue. Nevertheless, Taxpayers are notified that they must file a complete IT-40RNR for tax year 2013.

FINDING

Taxpayers' protest is sustained.

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